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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/764,829 01/17/01 LANDA

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000201  
UNILEVER  
PATENT DEPARTMENT  
45 RIVER ROAD  
EDGEWATER NJ 07020

HM22/0828

EXAMINER

PRYOR, A

ART UNIT

PAPER NUMBER

1616

DATE MAILED:

08/28/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trad marks**

# Office Action Summary

Application No.  
09/764,829

Applicant(s)  
Landa et al

Examiner  
Alton Pryor

Art Unit  
1616



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jan 17, 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17-22 is/are rejected.
- 7) ☒ Claim(s) 16 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some\* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4 20) ☐ Other:

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***Claim Rejection under 35 U.S.C. 102(b)***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-4,7,9,13,18-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Motley et al (US 5,516,511; 5/14/96). Motley discloses a gel antiperspirant composition comprising aluminum and zirconium salts (antiperspirant active), EDTA (chelator), 12-hydroxystearic acid (gelling agent), and perfume. Motley teaches that the composition is applied to skin to prevent perspiration and mal-odor. See abstract, column 1 line 65 - column 2 line 24, column 3 line 40 - column 4 line 46, column 5 lines 4-37. In a claim to a product or composition, statement of the intended use for individual components is not patentable.

***Claim Rejection under 35 U.S.C. 103(a)***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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1- 15,17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Motley et al above and Kraskin (US 4,356,190; 10/26/82) or Wusirika (US 4,778,671; 10/18/88). Motley discloses a gel antiperspirant composition comprising aluminum and zirconium salts (antiperspirant active), EDTA (chelator), 12-hydroxystearic acid (gelling agent), and perfume. Motley teaches that the composition is applied to skin to prevent perspiration and mal-odor. See abstract, column 1 line 65 - column 2 line 24, column 3 line 40 - column 4 line 46, column 5 lines 4-37. Motley does not teach a) that the chelator, DTPA, is used for transitional metals such as iron b) hardness of the composition, c) product as an aerosol, d) the instant amounts of ingredients or the instant coefficient, and e) additional organic antimicrobial agent. However, Wusirika or Kraskin teaches an antiperspirant/deodorant composition comprising DTPA. See US '190 claim 1. See US '671 abstract. It would have been obvious to one having ordinary skill in the art to combine the compositions. One would have been motivated to do this in order make a more effective antiperspirant. It would have been obvious to make the instant composition comprising more than one active. It is well known the art to combine two actives having the same utility. In the absence of unexpected data, the optimal amount of ingredients, coefficient, and hardness would have been determined through routine experimentation. Also, in the absence of unexpected the form (aerosol) of application has no patentable weight.

### *Claim Objection*

Claim 16 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any

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intervening claims. The prior art does not suggest the instant composition comprising the actives of claim 16.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton Pryor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.



Alton Pryor

Patent Examiner, AU 1616

8/24/01